2006 Legislative Report from the Vermont Department of Health

THE FORENSIC MENTAL HEALTH SUMMER WORK GROUP

January 2006

VERMONT
DEPARTMENT OF HEALTH

REPORT OF THE FORENSIC MENTAL HEALTH SUMMER WORK GROUP
Submitted to:
The House Committee on Human Services
The Senate Committee on Health and Welfare

The Work Group

The Forensic Mental Health Summer Work Group was established by a legislative amendment to 13 VSA §4815. This amendment was contained in the appropriations bill and provided for the Commissioner of Health to have discretion to provide inpatient forensic evaluations at designated hospitals, in addition to the Vermont State Hospital (VSH). The amendment also provided for a court to only order an inpatient examination when a qualified mental health professional (QMHP) determined that the defendant is a person in need of treatment as defined in 18 VSA §7101(17). The amendments sunset on July 1, 2006, and the statute will revert to prior text.

Members of the Work Group:

Wendy Beinner, AAG, Department of Health, Division of Mental Health, Chair
Lee Suskin, Court Administrator
Jane Woodruff, State's Attorneys and Sheriffs
Anna Saxman, Defender General's Office
Jack McCullough, Mental Health Law Project
Joellen Swaine, Vermont State Employees Association
Bob Bick, Designated Agencies
Kristin Chandler, AAG, Department of Health, Division of Mental Health
Christine Bilbrey, Department of Health, Division of Mental Health
Patti Barlow, Department of Health, Division of Mental Health ,Acute Care Team
Linda Corey, Psychiatric Survivors
Jim Huitt, Howard Center for Human Services

The Work Group's Charge:

The work group was charged with reviewing the following issues:

1) transfers between hospitals, including standards, procedures, and rights of patients;
2) determination of the least restrictive setting for the forensic evaluation;
3) disposition of the defendant if it is determined after admission that the defendant does not meet the standards for hospitalization;
4) legal representation of defendants and the state in hospitalization hearings; and
5) other issues as determined by the work group.

Meetings and Public Involvement

The work group met four times for two-hour sessions commencing in September, 2005. The meetings were open to the public. However, a public member only attended on one occasion. Minutes were kept. The work group heard from Dr. Tom Simpatico, Medical Director at VSH. Written materials were distributed by members of the committee.

Work of the Group

A. Transfers between hospitals

Tom Simpatico, M.D., Medical Director, Vermont State Hospital, presented current data regarding transfers of patients/defendants between designated hospitals. One chart exhibited some of the factors that will need to be considered before transferring a patient/defendant between designated hospitals: danger to self or others; public safety risk; high elopement risk; history of violence; and violent vs. non-violent charges. The group also considered court location and location of the patient/defendant's family and/or home. We discussed a person's right to refuse transfer to another hospital. Based on legal counsel and work group recommendations, it was concluded that a patient committed for an inpatient forensic evaluation cannot refuse a transfer. Transportation issues were also discussed; there is another committee charged with exploring issues regarding transportation between courts and hospitals.

B. Determination of the Least Restrictive Setting for Forensic Evaluations

The group collectively agreed that an evaluation in the community (at a courthouse or forensic psychiatrist's office) is the least restrictive setting.

The current legislation provides for the court to only order an in-patient evaluation when a screener has recommended it. The screener must make a determination that the defendant is a person in need of treatment and if so, where the forensic evaluation regarding sanity and/or competency should take place. The law provides that the evaluation must occur in the least restrictive environment. See Appendix A for the complete statutory language.

Currently a Qualified Mental Health Professional (QMHP) screens a defendant at the court. If the evaluation needs to occur in a hospital setting, the QMHP will determine which hospital is most clinically appropriate. The QMHP will determine whether or not that hospital can accept the defendant and then make a recommendation to the court. The court can only order a defendant for an inpatient evaluation if the QMHP has determined that the person is a person in need of treatment.

The work group discussed the role of the QMHP at length, given the value placed upon his or her recommendation regarding the least restrictive environment for a forensic evaluation. Patti Barlow, Acute Care Team Director, presented to the work group the qualifications of a QMHP and explored some of the difficulties of performing a screening in a short amount of time. Lee Suskin, Court Administrator, reported that the change to the statute was working well, however; it could be construed that authority for sending a defendant to an inpatient setting is in the hands of a witness (the QMHP). Christine Bilbrey, from the Division of Mental Health reported that on approximately four occasions, a judge had not followed the statute and had referred a patient to VSH without a screener's evaluation and recommendation on whether the defendant was a person in need of treatment.

The Forensic Mental Health Work Group recommends that a further change to the amended statute is necessary to protect both a defendant's rights and the judicial authority. A change to the current legislation would allow for the court to have some discretion over which defendants are ordered for an in-patient evaluation. While the newly enacted language has worked well, not all judges are following it. Allowing for some discretion will achieve the goal of ensuring that all defendants are appropriately referred for an in-patient evaluation and when possible, this is close to the court or home of the individual and utilizes other mental health resources across the state beyond those at Vermont State Hospital.

1. The work group proposes the following addition to the statute:

Recommendation

(g)(1) Inpatient examination at the state hospital or a designated hospital. The court shall not order an inpatient examination unless:

i. the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 VSA §7101(17) or;
ii. the Court determines that the person is a person in need of treatment. Such a determination shall be supported by findings on the record.

C. Disposition of the Defendant if it is Determined after Admission that the Defendant does not Meet the Standards for Hospitalization.

On occasion, an admitting psychiatrist, upon examining the defendant, will determine that the person is in fact not a person in need of treatment. A person who does not need the services of VSH can create extreme disruption on any given unit of the hospital. VSH does not have the resources or should it serve the function of caring for a defendant who is charged with a crime but not suffering from a mental illness requiring hospitalization. The effect on VSH patients can be extreme and taxes the limited VSH resources. Currently, after a forensic evaluator has determined that the defendant is competent and/or sane, the statute provides for a return to court within 48 hours of a request from the Commissioner. In general, this timetable means that a defendant is at VSH for a minimum of seven days (taking into account scheduling the evaluation, conducting the evaluation, writing the report and the return to court). Often, the timetable is longer. Rather than have to wait for the forensic evaluation to occur, it would benefit both VSH and the defendant if he/she could be returned to court as soon as possible.

2. A majority of the work group proposes the following legislation:

Recommendation:

(g)(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the Commissioner of Health for not more than 30 days from the date of the order, and the defendant shall be returned to court for further appearance as soon as the examination has been completed, if ordered by the court. If, upon examination at admission by a psychiatrist at a designated hospital or Vermont State Hospital and prior to the forensic evaluation, the defendant is determined to not be a person in need of treatment, the commissioner may request a return to court for determination of the least restrictive environment to complete the evaluation. If a return to court is ordered, such return shall occur within 48 hours of the commissioner's request. The commissioner shall have the authority to determine the most clinically appropriate designated hospital for the examination and to transfer the defendant between designated hospitals at any time while the order is in effect.

D. Legal Representation of Defendants and the State in Hospitalization Hearings

After a defendant is found incompetent, the district court holds a hospitalization hearing. Often, the court holds the competency hearing and the hospitalization hearing at the same time. A state's attorney and a defense lawyer (almost always a public defender) represents the respective parties. There is a concern about the quality of representation of mentally ill defendants by lawyers not adequately trained on mental health issues. State's Attorney's also do not have specialized training similar to the assistant attorney generals assigned to the Division of Mental Health. The work group decided this is a serious training issue for both public defenders and state's attorneys which should be addressed in the future. Neither the Mental Health Law Project nor the Mental Health Legal Division has resources to appear in court for hospitalization hearings but they can provide training as needed.

E. Other Issues

The work group discussed the issues of confidentiality and discovery in court proceedings when a screener is giving recommendations to the court. The rules for Public Access to Court Records, §6(b)(19) provides that the public shall not have access to "an evaluation by a mental health professional to determine the competency to stand trial and/or sanity of a criminal defendant, if not admitted into evidence".

Recommendation:

1. The work group proposes that the screener's (QMHP) report and recommendations be accorded the same confidentiality and protection as the evaluation for competency/sanity under the rules.

2. The work group proposes that 13 VSA §4816(c) be amended as follows:
   No statement made in the course of the examination or the screening by the person examined, whether or not he has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

The work group chose to discuss these additional topics: (a) QMHP qualifications and training, (b) the number of forensic admissions to VSH, (c) the process whereby screeners make referrals for hospitalization, (d) inpatient evaluations versus out patient evaluations, and (e) comparison of the opinions of each of the three state-contracted forensic evaluators. The group did not seek to make any changes to the forensic process or statute based on these discussions.